

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 56 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? no.

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STATE OF GUJARAT

Versus

ABDUL RASIDKHAN USMANKHAN

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Appearance:

MR MI HAVA with Mr.S.J.Dave AGP for Petitioners  
MR DM THAKKAR for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/07/96

ORAL JUDGEMENT

State of Gujarat has filed the present petition under article 227 of the Constitution of India to challenge the order of the Labour Court in Ref.(LCR) No.959/82 by which the respondent is ordered to be reinstated in service on his original post with full

backwages.

2. The respondent-Abdul Rashidkhan Usmankhan was working as a workman in the office of the Deputy Engineer, Scarcity Control Division since 15.8.80. His initial appointment was for three months and thereafter he was appointed from time to time for a period of 29 days on each occasion. He was ultimately dismissed from service on 17.4.82. Therefore, the respondent herein raised a dispute and on account of raising a dispute, the matter went before the Presiding Officer, Labour Court by way of Ref.(LCR) No. 959/82. The contention of the present petitioner before the Labour Court was that the provisions of Industrial Disputes Act do not apply to the petitioner as it is a State Government and not an Industrial unit. It was also contended that the respondent was initially appointed for a fixed period of three months and only subsequent appointments were made temporary appointments and there was no question of making any inquiry before terminating his services as his services have been validly terminated on 17.4.82 and he is not entitled to get benefit of any permanent employment.

3. All the contentions raised by the respondents were considered by the Presiding Officer, Labour Court and he negatived all the contentions. The Labour Court came to the conclusion that the respondent was a workman within the provisions of Industrial Disputes Act and that he had worked for more than 240 days in the period running between 17.4.81 and 17.4.82 and he was entitled to get benefit of provisions of section 21F of the Industrial Disputes Act and therefore, he passed the following order:

" The Deputy Engineer, Salinity Control Division,  
Jamnagar is ordered to reinstate the workman Abdul  
Rasidkhan Usmankhan to his original post with  
continuity of service and with full back wages.

Deputy Engineer, Salinity Control  
Division, Jamnagar is ordered to pay cost of Rs.  
105/- to the workman"

3. It is vehemently urged before me by the learned  
A.G.P. for the State that the petitioner is Government  
and it is not an Industrial Unit and therefore,  
provisions of Industrial Disputes Act are not applicable.  
When the State is undertaking the activity which is not

directly the duty of the State, then the State ceases to be a pure State and the activity of the State would be governed by the provisions of Industrial Disputes Act. This question is considered by the Full Bench of this Court in the case of P.W.D. Employees Union vs. State of Gujarat 1987(2) GLR 1070 wherein the following principles are laid down

"Where the State embarks upon an activity which is not stricto sensu regal but of a commercial nature, and the activity is such which a party can undertake, the activity is an industry and the workmen employed in connection with that activity is entitled to the protection of the Act."

Therefore, the finding recorded by the Labour Court that the provisions of Industrial Disputes Act are applicable to the facts of the case will have to be upheld.

4. There is no dispute of the fact that the petitioner was initially appointed temporarily for a period of three months by letter dated 5.1.81. The material on record further shows that he was appointed by letters dated 9.4.81, 15.5.81, 17-6-81, 20.7.81, 27.8.81, 28.9.81, 29.10.81, 21.11.81, 24.12.81 for 29 days on each occasion.

5. Therefore, in view of the above stated facts, it would be quite clear that the finding recorded by the Presiding Officer, Labour Court that he was working for more than 240 days within a period of one year is obviously correct and the same could not be said to be illegal or improper. When the respondent was working for more than 240 days and when he is a workman, his termination without following due procedure laid down by section 25F of the I.D. Act would be illegal and invalid and he would be entitled to the protection of the said provisions. Therefore, the finding recorded by the Presiding Officer, Labour Court that his case is governed by section 25F of the I.D. Act is quite correct and proper and said could not be said to be illegal or improper.

6. Therefore, in view of the above discussion it would be clear that the respondent who was initially recommended by the employment exchange was a workman with the present petitioner and he had worked for more than 240 days. The persons junior to him have been appointed permanently. Therefore, in the circumstances the order passed by the Presiding Officer, could not be said to be illegal or improper. Therefore, the petition will have

tobe dismissed and the same is accordingly dismissed.  
Rule discharged. No order as to costs.

(S.D.Pandit.J)